

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

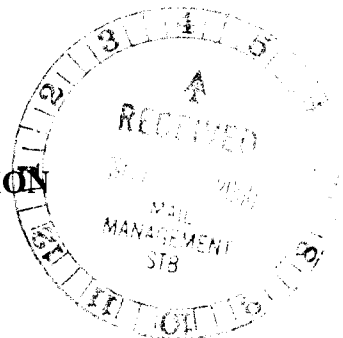
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Docket Ex Parte No. 582 (Sub No. 1)  
MAJOR RAIL CONSOLIDATION PROCEDURES

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**COMMENTS OF AMERICAN FOREST & PAPER ASSOCIATION**

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**ENTERED**  
**Office of the Secretary**  
**NOV 17 2000**  
**Part of**  
**Public Record**

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November 17, 2000

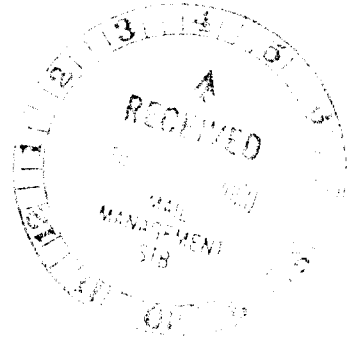
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**COMMENTS OF AMERICAN FOREST & PAPER ASSOCIATION**

American Forest & Paper Association ("AF&PA") hereby submits these comments in response to the Board's Notice of Proposed Rulemaking in this important proceeding, pursuant to the Board's decision herein, served October 3, 2000, and published in the *Federal Register* on October 3, 2000 (65 Fed. Reg. 58974). The Board has instituted this proceeding to provide interested persons an opportunity to comment on proposed modifications to the Board's regulations at 49 C.F.R. Part 1180, subpart A establishing procedures and policies for the consideration of applications for approval of major rail consolidations. Echoing concerns that AF&PA has advanced consistently in previous rail consolidation proceedings, the Board's decision implementing this proceeding states (NPR. at 11):

While the existing policy statement focuses on greater economic efficiency and improved service as the most likely and significant public interest benefits, our proposed statement adds and highlights enhanced competition as an important public interest benefit, recognizing that, with only a few Class I carriers remaining, a transaction involving two Class I rail carriers will affect the entire transportation system, including highways, waterways, ports, and airports. Thus, before we approve any major transaction — which in turn may, and likely will, result in responsive merger proposals by other Class I carriers — we must be confident that at the end of

the day a balanced and sustainable rail transportation system is in place.

AF&PA appreciates the opportunity to respond to the NPR and to presents its views for the Board's consideration. As indicated below, the forests products and paper industry is the country's fourth largest user of rail transportation services and it is the largest user of rail boxcars. The forest products and paper industry needs a healthy and competitive rail system.

#### **IDENTIFICATION AND INTEREST OF AF&PA**

AF&PA is the national trade association of the forest products and paper industry. Its membership includes large and small forest products and paper companies, forest landowners, tree farmers and affiliated organizations. The forest products and paper industry has total annual sales of approximately \$200 billion, is among the top 10 manufacturing employers in 46 states, and generates 7% of all U.S. manufacturing output. Annually, the industry generates in excess of \$17 billion in international trade. Transportation represents between 5-25% of sales and is our third highest product cost.

The forest products and paper industry is the fourth largest user of rail transportation in the United States. Significantly, the industry's \$183 billion of domestic flows, combined with the inland portion of its international flows, makes the industry one of the largest commodity shippers in the country. Much of the industry's exports and domestic sales are transported by rail. In fact, the forest products and paper industry moves an average of 24,000 rail carloads in any given week. The industry is responsible for 70% of all railroad boxcar traffic, including 19 million tons of recycled paper, and 95% of all centerbeam lumber car traffic. The industry also represents significant carload volumes of inbound raw materials such as logs, wood chips, coal,

chemicals, and thousands of containers carrying finished goods for domestic and offshore distributions.

**THE BOARD'S PROPOSED CONSOLIDATION REGULATIONS SHOULD BE  
REVISED SO AS TO AFFIRMATIVELY ENHANCE COMPETITION**

AF&PA believes that vigorous rail-to-rail competition is necessary for a healthy rail system. AF&PA members are concerned about the changes in the competitive dynamics of the national rail structure. The forest products and paper industry is concerned that the evolving oligopolistic national rail structure will not sustain the low-cost, efficient transportation infrastructure that is needed over the longer term to be globally competitive. The industry believes that vigorous competition between transportation providers, both within a mode and between modes, is the most effective way to ensure that needed low-cost, efficient transportation is available for the shipping public. Without competition, there is no incentive for the railroads to provide consistent service levels, improve and maintain low cost levels, nor furnish adequate supplies of quality boxcar equipment.

Competition is the proven foundation for ensuring that our nation's economy remains healthy and competitive. We believe the railroad industry should operate with those same economic incentives as any other business, including adherence to our Nation's antitrust laws. . The changes proposed in the NPR reflect a recognition by the Board of the need for change in the policies governing rail consolidations. However, AF&PA urges the Board to ensure that the new policies and procedures reflect the need to ensure that rail-to-rail competition exists to the "maximum extent possible." 49 U.S.C.A. § 10101(1).

In that regard, AF&PA endorses the Statement submitted in this proceeding by the Alliance for Rail Competition, and the Principles for Reform of Merger Proceedings and Related Regulations attached thereto. For ready reference, those principles are set out below:

**PRINCIPLES FOR REFORM OF MERGER PROCEEDINGS  
AND RELATED REGULATION**

Upon review of the statements filed in Ex Parte No. 582 (Sub-No. 1), many members of the rail customer community recognize our growing consensus on issues raised by the concentration of railroad market power in the U.S. and the danger of the emergence of two huge monopoly railroads in North America. Our consensus is reflected in the following pro-competitive principles, which should guide the Surface Transportation Board in its development of improved policies and procedures:

- ◆ Stronger action must be taken to hold merging railroads accountable for their promises of improved service and more efficient operations.
- ◆ The severe service problems that have resulted from past railroad mergers must be prevented and/or mitigated through effective remedies, including performance guarantees, compensation and access to other railroads.
- ◆ Current regulatory policies, including the bottleneck decision, the “one-lump” theory, and the “2-to-1” rule, have failed to prevent the reduction of competition among major railroads, which now enjoy unprecedented market power.
- ◆ The regulatory policies of the past, which the STB has recognized as inadequate and which even many railroads are now recognizing as flawed, should be replaced by new policies aimed at promoting competition.
- ◆ Access remedies such as trackage rights and switching on fair and economic terms should be more readily available, whether or not there are future mergers.
- ◆ Contractual and operational barriers to competition from smaller railroads should be eliminated or reduced, whether or not there are future mergers.
- ◆ Gateways for all major routings should remain open on reasonable terms.
- ◆ Adverse impacts of rail consolidations on the safety of rail operations and on the interests of rail labor should be mitigated.
- ◆ Cross-border mergers should not interfere with effective regulation and the enhancement of competition; and
- ◆ Railroad mergers can no longer be considered in isolation.

The need for improved and enhanced competition along these lines is so strong and immediate that the STB should use the full extent of its authority to revise its policies consistent with these principles. The Board’s efforts in Ex Parte No. 582 (Sub-No. 1) should include, but not be limited to, all of the recommendations in the proceeding that would:

1. Increase competition among railroads;

2. Improve service and safety; and
3. Address any problems or flaws—present or future—that result directly or indirectly from rail mergers.
4. Recognizing that the Board may not have the necessary authority to fully achieve comprehensive policy reform consistent with all of the above-listed principles, the rail customer community will continue to press for congressional action that would provide the necessary legislative direction to achieve these principles.

#### **COMPETITION IS A PROVEN REGULATOR OF RAIL TRANSPORTATION MARKETS**

The Board must reinforce this essential principle in all its regulatory actions, to the maximum extent permissible under the Board's authority. These actions must enable shipper and carrier interaction with little or no Board involvement. All efforts must be directed to finishing industry deregulation through the opening of market based competitive processes, as found in normal commerce, rather than creating new or added regulatory processes.

Additional market based processes should include:

- As in any procurement decision, a shipper must have a real choice in whom to do business with. Shippers with single rail service often move cargo by truck instead of rail. With rail choice, additional market share could be achieved by the rail industry. Competitive access, to an alternative rail carrier, where operationally safe and feasible, would actively stimulate, not merely protect, existing competition.
- Shipper choice should be promoted through the adoption of terminal and reciprocal switching, using the Canadian Interswitching approach as a model (a distance-based threshold). Board involvement could be limited to instances only where the carrier and shipper could not agree on the threshold or a fair rate.
- Railroads appear to limit their focus on moving trains rather than time definite door to door services, which are commonplace in other transport modes. Third\_Party Marketers should be afforded the opportunity to develop such shipper-desired solutions. An expansion of current railroad intermodal marketing practices, non-asset owning companies would provide a plethora of

services while simultaneously providing incentive to the railroads to develop such services themselves.

- The Board should support an alternative means of managing rail market behavior, by the creation of common access points to create competition. AF&PA members would support access to TEA 21 funds to remove physical barriers in order to access alternative rail service, and encourage shippers to use the environmentally preferable mode of rail transportation for time definite delivery services.

#### CONCLUSION

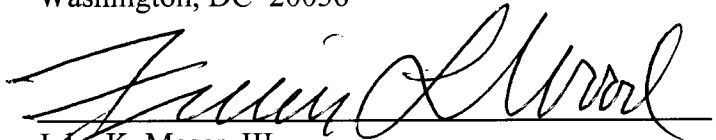
AF&PA asks the Surface Transportation Board to implement these policy changes to the maximum extent permissible under the Board's authority, finish deregulation, and permit marketplace actions to promote competition. AF&PA members are unified in a call to make changes in the rail industry to promote competition and provide service levels that are adequate to serve rail customers.

We must ensure that our nation's rail system contributes to the vitality of all shippers in our economy so that our global competitiveness is maintained.

Respectfully submitted,

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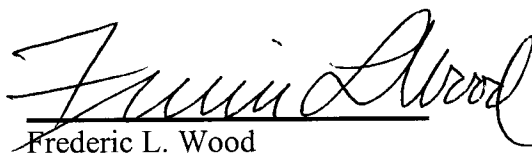
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of November, 2000, I served copies of the foregoing Comments upon all parties of record by first-class mail, postage prepaid, in accordance with the Board's order in this proceeding and with Rules of Practice.

  
Frederic L. Wood